IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

LANSINK CONSTRUCTION COMPANY, INC., Plaintiff, vs. GREGORY P. FORNEY and SHAFFER, LOMBARDO SHURIN, P.C., Defendants.	))))))))))	Case No.________________

COMPLAINT

Plaintiff Lansink Construction Company, Inc., by and through undersigned counsel, for its causes of action against defendants Gregory P. Forney and Shaffer, Lombardo Shurin, P.C., states and alleges as follows:

PARTIES

1. Plaintiff Lansink Construction Company, Inc. (hereinafter “Lansink”) is an Iowa corporation with its principal place of business located at 5967 Merle Hay Road, Johnston, IA 50131.

2. Defendant Gregory P. Forney (hereinafter “Mr. Forney”) is a citizen and resident of Kansas residing at 10111 W. 126th, Apartment W., Overland Park, KS 66213-2131.

3. Defendant Shaffer, Lombardo Shurin, P.C. (hereinafter “Shaffer”) is a Missouri professional corporation with its principal place of business located at 2001 Wyandotte Street, Kansas City, MO 64108.

4. Shaffer’s registered agent for service of process in Missouri is SLS Service Corp., Inc., 2001 Wyandotte Street, Kansas City, MO 64108.

5. At all times relevant Mr. Forney was an agent and/or employee of Shaffer.

6. All actions and omissions of Shaffer's employees and agents, actual, apparent or otherwise, as alleged herein, were performed within the scope of their duties as employees and agents of Shaffer, and Shaffer is vicariously liable for the acts and omissions of its employees and agents, actual, apparent or otherwise.

7. At all times relevant Mr. Forney was an attorney licensed to practice law in Kansas and Missouri.

8. At all times relevant Mr. Forney was in an attorney – client relationship with Lansink.

9. At all times relevant Mr. Forney was in a fiduciary relationship with Lansink.

JURISDICTION & VENUE

10. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(a) because this action is between citizens of different states and the amount in controversy is in excess of Seventy-Five Thousand Dollars ($75,000.00), exclusive of interest and costs.

11. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the acts and omissions giving rise to Lansink's claims occurred in Missouri and Defendants are subject to personal jurisdiction in Missouri.

FACTUAL BACKGROUND

12. In 2014, a dispute (hereinafter the "Dispute') arose between David Byrne (dba Byrne's Construction) (hereinafter "Byrne"), Lansink, Millard Lumber, Inc. (hereinafter "Millard) and Henning Construction Company, LLC (hereinafter "Henning") regarding work performed by Byrne on the Stoney Creek Inn located at 18011 East

Bass Pro Ship Drive, Independence, MO 64055 (hereinafter the "Project") and the payment owed to Byrne for said work.

13. Because of the Dispute, on or about August 5, 2014, Byrne filed a mechanic's lien on the Project. *See Jackson County Court filings, Case No. 1416-MC13351*.

14. On August 11, 2014, Mr. Forney received an email from Iowa attorney Chet A. Mellema seeking Missouri counsel to represent Lansink and protect its interests in the Dispute and the Project, and to file a mechanic's lien on the Stoney Creek Inn. Mr. Forney responded to Mr. Mellema's email stating: "Happy to help. Let me talk to my partner, Jennifer Price, who handles construction litigation."

15. On August 18, 2014, Mr. Mellema followed up with Mr. Forney and Ms. Price about retaining them to represent Lansink's interests in the Dispute and the Project and filing a mechanic's lien.

16. On August 21, 2014, Ms. Price emailed Mr. Lansink (copying Mr. Forney) stating: "Correy – Thanks for sending the attached documents. I just left you a voicemail message. Because there are time sensitive matters regarding liens, I've asked Greg Forney (Chet's friend) to get involved in this matter. Either Greg or myself will call you tomorrow."

17. Because Missouri law provides that a mechanic's lien must be filed within six months of the last day of work on the Project, and because the Project was not completed as of August 21, Ms. Price's statement that were "time sensitive matters involving liens" was nonsensical. There were no time sensitive issues as of August 21st and thus there was no reason to delegate Lansink's representation to Mr. Forney who

had no experience in construction litigation. If Mr. Forney had been honest with Lansink he would have declined to represent it because he was ignorant about Missouri construction law.

18. On or about August 21, 2014, Correy Lansink, Lansink's president, entered into a contract with Mr. Forney and Shaffer whereby Mr. Forney and Shaffer agreed to represent Lansink in connection with the Project and the Dispute, to protect Lansink's interests in the Project and Dispute and to file a mechanic's lien on the Stoney Creek Inn.

19. On August 24, 2014, Mr. Lansink emailed Mr. Forney the initial demand notice from Byrne's attorney, Owen Griffin, the notice of intent to file a mechanic's lien, a copy of the mechanic's lien statement and a copy of Lansink's contract with Millard.

20. On September 10, 2014, Mr. Lansink received an email from Jeff Taake of Millard Lumber regarding a settlement agreement that Henning Construction was trying to negotiate with Byrne, without Lansink's knowledge, in which Byrne would be paid $75,639.00. On the same day, September 10, 2014, Mr. Lansink forwarded Mr. Taake's email to Mr. Forney.

21. Also on September 10, 2014, Mr. Lansink sent an email to Mr. Forney with an explanation as to why Byrne was owed at most $16,525.10, not the $75,639.00 that Henning was proposing to pay to Byrne in settlement. Mr. Forney sent an email back to Mr. Lansink that day, stating: "Good summary. Thanks for your very good walk thru today. I'll get busy."

22. On September 11, 2014, Mr. Forney prepared a draft letter to Henning and sent it to Mr. Lansink for his review. Mr. Lansink sent an email back to Mr. Forney

on the same day, approving the content of the letter. In the letter, Mr. Forney stated that Byrne was owed $14,000.00 to $16,000.00, that Lansink is owed “considerable sums” and that Lansink reserved its rights to file a mechanic’s lien.

23. On September 15, 2014, Mr. Forney sent an email to Mr. Lansink stating that he had not heard from Henning’s attorney and that it “looks like we may have a fight brewing.” Mr. Lansink sent an email back to Mr. Forney on September 16, 2014, stating: “I’ll be up for it.”

24. On September 16, 2014, Mr. Forney sent an email to Mr. Lansink asking him to keep him advised of his construction completion schedule because Mr. Forney was planning to “send a notice of lien letter” in the next week if he had not heard from Henning or Byrne. Mr. Forney also asked Mr. Lansink to get “your lien amounts together” “so we can fairly and accurately file a Mechanics Lien.” Later on that same day, Mr. Lansink sent an email back to Mr. Forney providing copies of all invoices and applied payment history.

25. Later on September 16, 2014, Mr. Forney sent an email to Mr. Lansink stating that he had talked to Henning’s attorney who denied negotiating with Byrne directly, but who said that Henning itself may have negotiated with Byrne directly. Henning’s attorney told Mr. Forney that he would contact Byrne and ask Byrne to negotiate a settlement.

26. On September 19, 2014, Mr. Forney sent an email to Mr. Lansink stating: “I spoke to Millards lawyer yesterday. He is calling Henning to try and get his cooperation to force a mtg with byrne to try and hash out his claim. Alternatively, we discussed using a bond/escrow agreement to set aside enough money to satisfy the

lien so that money can again flow to Millard and you. Millard is owed 400k currently. If a bond/escrow is used, we then can fight it out with byrne without effecting the completion of the job as well as payment for the job." Mr. Forney's statements reveal his ignorance of Missouri mechanic's lien law. Missouri does not allow the bonding off of a mechanic's lien for this type of Project and there was no way to use a bond/escrow agreement to satisfy the lien. Doing so is specifically prohibited in Missouri.

27. On September 25, 2014, Mr. Forney sent Mr. Lansink another email stating that Byrne's attorney had agreed to a meeting during the week of October 6, and that Millard's attorney would attend "to impress upon Byrne the indemnity obligations that all flow back to Byrne in the event of a fight." Mr. Forney's statement further revealed his ignorance of Missouri law. No indemnity obligations could flow back to Byrne, the unpaid claimant in a breach of contract situation.

28. On November 25, 2014, Mr. Forney wrote an email to Mr. Lansink stating: "When was the last payment you received from Millard? I need an exact date..we have six months from the date of last payment to file a lien. Trying to negotiate an agreement with Millard and Henning to "toll" our lien filing deadlines. This means we all agree that the deadlines to file liens can be postponed for 90 days to allow us to mediate without filing a lien." Mr. Forney's statements again revealed his ignorance of Missouri law because the deadline for filing a mechanic's lien in Missouri was six months from the last day of work on the Project, not the date of payment. The date of payment has nothing to do with the deadline for filing a lien as established by extensive Missouri case law. Furthermore, it is impossible to toll a lien filing deadline in Missouri. A Judge cannot extend the mechanic's lien filing deadline in Missouri for any reason because

Missouri courts have no jurisdiction to do so. If Mr. Forney had entered into a tolling agreement for the filing of a mechanic's lien he would have destroyed Lansink's ability to file a mechanic's lien.

29. On November 26, 2016, Mr. Lansink sent an email to Michael George of Mr. Forney's law firm and copied Mr. Forney on the email. Mr. Lansink attached to his email certain documents for the preparation of a mechanic's lien. Later that same day, Mr. George sent an email back to Mr. Lansink, copying Mr. Forney on the email, stating that additional documents were needed for the preparation of a mechanic's lien. Later on that same day, Mr. Lansink sent another email to Mr. George, with a copy to Mr. Forney, attaching additional documents. Mr. Lansink did not attach other documents which had been requested by Mr. George because Mr. Lansink stated that he "does not see the need for a daily breakout of labor costs" and that "we did not supply materials other than those that are incidental to our work." Mr. Lansink stated that Lansink's last day of work on the project was that day (November 26, 2014).

30. Later that same day, November 26, 2014, Mr. Forney sent an email to Mr. Lansink, copying Mr. George, stating "sorry to be picky Correy but the lien statute is very specific. Hopefully, I can get an agreement to postpone the necessity of filing a lien. I'll keep you posted." Mr. Forney's statement about postponing the deadline to file a mechanic's lien again revealed his ignorance of Missouri law because the deadline for filing a mechanic's lien in Missouri cannot be extended for any reason.

31. On December 1, 2016, Mr. George sent an email to Mr. Lansink, copying Mr. Forney, explaining that the Missouri statutes require an itemized breakout of labor hours and material costs, and that such a breakout would be needed to file a

mechanic's lien. Mr. George also asked Mr. Lansink if he was personally served with Byrne's Notice of Intent to File Mechanic's Lien before Byrne's lien was filed. Mr. George's statement about Mr. Lansink needing to be personally served with Byrne's mechanic's lien again revealed Mr. Forney's ignorance of Missouri law because there was no requirement that Mr. Lansink be personally served.

32. Later on that day, December 1, 2016, Mr. Lansink sent an email to Mr. George, copying Mr. Forney, attaching a job cost report. Mr. Lansink stated in the email that he wanted to know before a Notice of Intent was sent and before a lien was filed because he wanted to discuss the lien with Millard prior to filing. Mr. Lansink also asked Mr. Forney why he was not attacking Byrne's lack of accuracy in its lien documentation. Mr. Lansink also said that he did not recall being personally served with anything regarding the lien.

33. Later on that day, December 1, 2014, Mr. Forney sent an email to Mr. Lansink, copying Mr. George, stating that "we are challenging Byrnes lien. My preference is to avoid a lien if possible but we must plan for the worst. We will challenge Byrne's lien once arbitration is invoked. The only reason for preparing a lien for you is to try to preserve your right to seek payment from Millard. There are other options. If you have time, call me tomorrow in the morning." Mr. Forney's statement about "challenging Byrnes lien" was false because he never did anything to challenge Byrne's lien.

34. Later on that day, December 1, 2014, Mr. George sent an email to Mr. Lansink, copying Mr. Forney, stating that a Lansink lien could be subject to a "quick and outright dismissal" if the procedural components were not followed. Mr. George also

stated that since Mr. Lansink was not personally served with the Notice of Intent by Byrne for its lien, "we may have additional grounds for challenging Byrne's lien." Mr. George's statement about Mr. Lansink needing to be personally served with Byrne's mechanic's lien again revealed Mr. Forney's ignorance of Missouri law because there was no requirement that Mr. Lansink be personally served.

35. Later on that day, December 1, 2014, Mr. Lansink sent an email to Mr. George, copying Mr. Forney, stating: "OK thanks. let me know if there is anything else you need from me."

36. Later on that day, December 1, 2014, Mr. Lansink spoke to Mr. Forney by telephone stating that Lansink wanted to postpone the filing of the mechanic's lien because it would potentially harm his business relationship with Millard. Mr. Forney encouraged Mr. Lansink to go to mediation instead of filing a mechanic's lien. Mr. Lansink stated that he did not want to go to mediation and that he wanted to challenge Byrne's lien in some fashion. Mr. Forney told Mr. Lansink that he knew a mediator who would effectively put Byrne in its place and make Henning see its potential liability for signing extra hour sheets. Based on those statements by Mr. Forney, Mr. Lansink agreed to mediate.

37. On December 18, 2014, Mr. Forney sent an email to Mr. Lansink stating that he had finally cornered the attorneys for Byrne and Henning and said that the mediation was scheduled for January 23, 2015, in Kansas City. Mr. Forney stated that he had completed the arbitration forms and was ready to file but wanted to file them after the mediation. He said that he would use the mediation statement as a road map for the arbitration and said that "Henning has not yet committed to attending but we can

use the mediators findings as leverage in negotiating with them to pay for their conduct." Mr. Forney's statement about preparing the arbitration statements was false because he never prepared any arbitration statements.

38. On December 22, 2014, Mr. Forney sent an email to Mr. Lansink stating: "Good news. Henning agreed to attend mediation. We might actually get something accomplished."

39. On January 16, 2015, Mr. Forney wrote a six-page mediation statement to mediator Bruce Waugh. Mr. Forney stated that Byrne's mechanic's lien claim was not valid for several reasons, and that Henning may be liable for unilaterally approving some of Byrne's extra work claims without Lansink's consent.

40. On January 19, 2015, Mr. Lansink sent an email to Mr. Forney asking "are we still on for Friday the 23rd? When and where?" Later on that day, Mr. Forney sent an email to Mr. Lansink stating: "We are on for Friday. My office. I'll send you a copy of the mediation statement I sent out Friday."

41. On January 20, 2015, Mr. Forney sent an email to Mr. Lansink enclosing his mediation statement to Bruce Waugh. He stated at the beginning of his mediation statement that: "Unfortunately I am trying to prepare for an upcoming bad baby trial and am somewhat pressed for time" thereby demonstrating Mr. Forney's attention was devoted to other firm clients he deemed more important than Lansink. Because there were no "time sensitive matters" and because Mr. Forney knew nothing about Missouri construction law, there was no need to rush the Lansink matter because Mr. Forney's attention was devoted to a "bad baby case" he determined was more important than representing Lansink's interests. A reasonably competent lawyer would have

postponed the mediation and the settlement discussions with Millard, Henning and Byrne until after his or her "bad baby case" trial was over thereby allowing counsel to focus his or her mind and attention on the Lansink case when he or she could have sought and received competent advice from Jennifer Price and/or Leland Shurin, his law partners.

42. In an effort to resolve the Dispute, on January 23, 2015, a mediation was held with mediator Bruce Waugh with Byrne, Henning, Millard and Lansink in attendance.

43. At the end of the mediation, Mr. Waugh told Mr. Lansink that the terms of the settlement were as follows: Byrne agreed to accept $75,000.00 in settlement of its claims. Lansink agreed to contribute $43,848.00 to the settlement, contingent upon being paid $260,013.75 from Millard. Millard agreed to pay in $15,000.00 to the settlement, plus the amount of a $16,152.00 change order, but Millard had to verify the change order. All of this was contingent upon Millard being paid $388,741.00 from Henning. Henning agreed to pay Millard in full with no setoffs, back charges or credits. Mr. Waugh said that the $16,152.00 was "house money" that Millard should contribute. Millard's attorneys said they needed to check with their client. Mr. Lansink told Mr. Waugh and Mr. Forney that there was no such thing as "house money," that the change order was either for material Millard supplied, or for work Lansink performed, in which case it was part of the $260,013.75 owed to Lansink. Mr. Lansink made it clear to Mr. Waugh and Mr. Forney that the $16,152.00 could not come off of Lansink's payout on the back end, and that the absolute maximum exposure that Lansink would accept to settle with Byrne was $50,000.00.

44. On January 26, 2015, Mr. Waugh sent an email to counsel for Millard, Russell Westerhold, stating that Henning's attorney, Jeff Stone, had said that there will be some back charges taken from the contract balances/retainage that Henning is holding and that if the back charges were disputed that would have to be resolved later.

45. On January 26, 2015, Mr. Westerhold replied to Mr. Waugh that Millard Lumber's commitment to settle the case was based on the expectation that there were no back charges/deductions from Henning or anyone else. Mr. Westerhold said that he had reached out to counsel for Henning to get an itemization of the back charges and that he was on hold until he received the itemization. Mr. Westerhold stated: "We may have to go the route where we all agree exactly who is going to pay who how much all the way up and down the chain."

46. On January 26, 2015, Mr. Waugh sent an email to counsel for Henning, Millard, Byrne and Lansink that stating: "Apparently we have a SNAFU with the proposed settlement."

47. On January 27, 2015, Mr. Westerhold, counsel for Millard, sent an email to Mr. Waugh and counsel for Henning and Lansink stating: "The SNAFU is this: Millard Lumber was under the impression that there would be no back charges assessed by Henning to it. We were specifically told that on Friday. That was part of the premise for Millard Lumber's offer. Yesterday we were informed by Henning's counsel that the following back charges would be assessed by Henning against Millard Lumber." His email contained a chart that itemized $16,462.40 in back charges. Mr. Westerhold's email concluded by stating: "Millard Lumber does not agree to these."

48. On January 27, 2015, Mr. Forney sent an email to Mr. Lansink attaching Mr. Westerhold's email of January 27, and enclosing an email from Mr. Waugh to Mr. Forney in which Mr. Waugh stated "I-O-W-A." Upon information and belief, I-O-W-A stands for Idiots Out Walking Around, a phrase often used sarcastically by Mr. Forney to describe how dumb Iowa people are, in his view.

49. On the morning of January 28, 2015, Mr. Lansink spoke to Mr. Forney by telephone and told Mr. Forney that he wanted to proceed with filing Lansink's mechanic's lien and that he was not going to pay a single penny to Henning.

50. On January 28, 2015, Mr. Waugh sent an email to counsel for Millard, Byrne and Lansink, but not to counsel for Henning, stating that he believed that there was a settlement among Byrne, Lansink and Millard.

51. From January 28, 2015 through February 10, 2015, Mr. Forney, Byrne and Millard engaged in numerous communications regarding a potential settlement without coming to any final, mutually-agreed upon settlement terms.

52. Henning was never provided with any emails from Mr. Waugh, Millard, Byrne or Lansink after January 28, 2015, and was not made aware of changes in the proposed settlement terms or any discussions of additional settlement terms after January 29, 2015.

53. On January 28, 2015, Mr. Forney sent an email to Mr. Lansink asking him to read the proposed settlement deal described in Mr. Waugh's email of January 28, 2015.

54. On January 28, 2015, Mr. Lansink sent an email to Mr. Forney regarding the settlement described in Mr. Waugh's email of January 28, 2015 and stated: "Looks

like Henning is not cooperating and we are left to go after our funds separately at which time Henning will drum up a bunch of setoffs which will then land in my lap. Without guaranteed payment terms for us there is NO deal."

55. On January 28, 2015, Mr. Forney sent an email to Mr. Waugh stating: "I have issues. Correy is not happy. I'll talk to him Thursday. He wants guaranteed release of his payout."

56. On January 28, 2015, Mr. Forney sent an email to Mr. Lansink, stating: "I will talk to everyone THURSDAY. Why the hell should we pay without a guarantee of getting paid? You will hear from me."

57. On January 28, 2015, Mr. Waugh sent an email to Mr. Forney stating: "I think the only one getting paid with this deal is Byrne. But with the mechanic's lien release, Henning will be hard pressed not to pay Millard, at least everything except the $16,000+ set-off. Millard would have a prompt pay act claim, as would Correy if Millard doesn't pay Lansink. So, bottom line, Millard and Lansink are better off getting the lien released (i.e. paying off Byrne) than not settling. Trust me Jimmy."

58. On January 29, 2015, Mr. Westerhold sent an email to Mr. Waugh and counsel for Byrne and Lansink, but not Henning, which stated that while Millard Lumber was in general agreement with the proposed terms, after review by his client, he would request specific revisions to the general terms, and he listed four numbered paragraphs of specific revisions.

59. On January 29, Mr. Forney sent an email to Mr. Westerhold stating "You and I need to talk. Correy Lansink is less than crazy about this proposal."

60. On January 29, 2015, Mr. Forney sent an email to counsel for Byrne, Millard and mediator Bruce Waugh stating: "Everybody sit tight. I have some client issues to address with these terms."

61. On January 29, 2015, Mr. Westerhold sent an email to Mr. Forney stating that he had verbally explained the proposed settlement to counsel for Henning, who said that he would take it back to his clients and let us know.

62. On January 29, 2015, Mr. Westerhold sent another email to Mr. Forney stating that counsel for Henning called back and informed him that Henning would accept a one-third/one-third/one-third deal on the Henning back charges. Mr. Westerhold asked Mr. Forney: "Can you get Correy on board with that?"

63. Also on January 29, 2015, Mr. Forney sent an email to Mr. Waugh stating: "We are settled. Thank you for all of your help. Pls note that his group will not reimburse you for your private limo to and from mediation nor your bag carrying groupies – no matter how good you are at your job." Mr. Forney did not speak to Mr. Lansink by telephone between January 29 and February 5, 2016 and was not authorized to tell Mr. Waugh on January 29 that "[w]e are settled" because the terms of the proposed settlement reached at mediation on January 23, 2015 had changed.

64. On January 30, 2015, Mr. Waugh responded to Mr. Forney's January 29, 2015 email stating: "Thanks for the update. Enjoyed getting to know you better. Hope we can do this again." Later on January 30, 2105, Mr. Forney responded to Mr. Waugh's email stating: "Thx for working O.T. I look forward to next time. Maybe I'll know something about construction law next time." Mr. Forney's ignorance of Missouri

construction law is further established by his admission to Mr. Waugh that he did not know anything about construction law while he was representing Lansink.

65. Mr. Forney did not communicate with Mr. Lansink on January 29, 2015 about any of communications that he had with other counsel regarding a proposed settlement.

66. On January 30, 2015, Mr. Forney sent an email to Mr. Westerhold stating: "I still need the total Henning is releasing and the amount thereafter being paid to Lansink."

67. On February 2, 2015, Mr. Forney sent an email to Mr. Lansink stating: "Here is Owen's W-9 info for issuing payment. Don't cut a check until I tell you. Still waiting on final payout numbers to confirm the deal." The email of February 2, 2015 was the last communication from Mr. Forney to Mr. Lansink until February 5, 2015.

68. On February 2, 2015, Mr. Westerhold sent an email to Mr. Forney stating that he showed that Henning's final payment to Millard Lumber under a settlement would be $378,081.43 and Millard's final payment to Lansink would be $254,683.59 subject to Mr. Westerhold and Mr. Forney checking with their clients about those amounts.

69. On February 2, 2015, Mr. Forney replied to Mr. Westerhold's February 2, 2015 email stating that Mr. Lansink showed a final payout in a different number, $260,013.75.

70. Mr. Westerhold replied to Mr. Forney's February 2, 2015 email stating that the $260,013.75 number was the original number he had for Lansink's payout but he

got to his number ($254,683.59) by deducting one-third of the $16,198.77 Henning back charge.

71. A deduction of any amount of the $16,198.77 back charge from Henning was not part of the proposed settlement discussed at the mediation on January 23, 2015.

72. On February 3, 2015, counsel for Byrne, Owen Griffin, sent an email to Mr. Westerhold, counsel for Millard and Mr. Forney (but not to Henning's counsel) regarding Mr. Griffin's agreement to a proposed settlement. Mr. Griffin stated: "I realize that there are other details to the settlement that still need to be worked out."

73. On February 3, 2015, Mr. Forney wrote an email to Mr. Westerhold and Mr. Griffin stating: "Yes we have a deal. I have a draft release. I will circulate the release later today or tomorrow."

74. At no time prior to Mr. Forney sending his February 3, 2015 email to Mr. Westerhold and Mr. Griffin had he discussed with Mr. Lansink any of the changes to the proposed settlement terms and Mr. Forney was not authorized to tell Mr. Westerhold, Mr. Owen or anyone else on behalf of Lansink "we have a deal."

75. On February 3, 2015, Mr. Forney sent an email to Mr. Westerhold and Mr. Griffin (but not to counsel for Henning) stating: "Here is my humble attempt at a release. Pls review and provide comments. After we are happy with its form we can circulate it to Stone."

76. Mr. Forney's draft of the release and all other later drafts of the release were never provided to Mr. Stone, Henning's counsel, for review.

77. On February 4, 2015, Mr. Westerhold sent an email to Mr. Forney enclosing Mr. Forney's version of the release with numerous changes by Millard in redline form.

78. On February 5, 2015, Mr. Forney and Mr. Westerhold exchanged five detailed emails regarding Mr. Westerhold's changes to Mr. Forney's draft release. Mr. Forney told Mr. Westerhold that the changes included terms that were not agreed upon, and which were "not the deal."

79. The email discussions on February 5, 2015 between Mr. Forney and Mr. Westerhold about Mr. Westerhold's changes to Mr. Forney's draft of the release concluded with Mr. Forney stating that he would discuss the changes with Mr. Lansink.

80. On February 5, 2015, Mr. Forney contacted Mr. Lansink for the first time since January 28, 2015 and told him that there had been changes to the settlement terms. Mr. Forney said that he was going to send Mr. Lansink some emails, that there were some items in the emails that Mr. Lansink would probably not be happy about, and that Mr. Lansink should review the emails and get back to him.

81. On February 5, 2015 Mr. Forney sent an email to Mr. Lansink stating that the numbers on the contract payout in the proposed release included a reduction in Lansink's payment down to $238,000.00. Mr. Forney asked Mr. Lansink if the documents and amounts met with his approval. A copy of Millard's version of the release was sent by Mr. Forney to Mr. Lansink on this date.

82. On February 6, 2015, Mr. Lansink sent an email to Mr. Forney stating that he would look at the Millard revised release over the weekend and get back to him.

83. On February 9, 2015, Mr. Griffin, counsel for Byrne, sent an email to Mr. Forney enclosing his revisions to the proposed release.

84. On February 10, 2015 Mr. Westerhold sent an email to Mr. Forney and Mr. Griffin stating that he saw nothing substantive in the final revisions from Mr. Griffin and that he would have his client sign Mr. Griffin's version of the agreement.

85. On February 10, 2015, Mr. Lansink sent an email to Mr. Forney stating "Greg, we are going to say NO to this deal. I will call you to follow up later today."

86. On February 10, 2015, Mr. Griffin, counsel for Byrne, and Mr. Westerhold, counsel for Millard, exchanged emails, copying Mr. Forney on each email stating that they would still need to get approval from Henning before the release was final.

87. As of February 10, 2015, Henning had received no emails from Mr. Waugh, Mr. Westerhold, Mr. Griffin, or Mr. Forney since January 28, 2015. There had been no communications between any counsel and Henning's counsel since January 29, 2015 and counsel for Henning had not seen any of the drafts of the release.

88. On February 10, 2015, Mr. Forney sent two emails to Mr. Griffin stating: "Correy has an issue. Don't know what it is yet. Find out later today. . . Correy is pissed off about something in the deal. I tried to call him twice today. I don't know what his issue is, but I'll find out tomorrow. I can't imagine what his problem is but let me school him on reality again."

89. On February 11, 2015, Mr. Lansink and Mr. Forney had a telephone conversation in which Mr. Forney encouraged Mr. Lansink very strongly to agree to the new proposed settlement. Mr. Forney went on and on about the perils of filing a

mechanic's lien (something he knew nothing about). Mr. Lansink realized during this phone call that he would have to seek another attorney to represent Lansink's interests.

90. On February 12, 2015, Mr. Lansink received a telephone call from the mediator Bruce Waugh. Mr. Waugh questioned Mr. Lansink as to why he was not agreeing to the deal. Mr. Waugh told Mr. Lansink that he could be sued for backing out of the agreement. Mr. Lansink told Mr. Waugh that he never agreed to the deal in any way, and that Mr. Forney had not been authorized to enter into any settlement.

91. On February 12, 2015, Mr. Lansink sent an email to Mr. Forney stating: "Just wanted to follow up again and reiterate that I will not accept the proposed settlement agreement. There are items in here that I made clear to you early on in this process were deal breakers for me. At this time I kindly request that you cease negotiations for a settlement in this matter. Furthermore, it has become clear to me that you and I are not on the same page regarding my case. I believe it is in my best interest to seek alternative representation for me and my company and I will proceed to do so."

92. Later in that day, February 12, 2015, Mr. Forney replied to Mr. Lansink's email stating: "OK. I will advise counsel that I have been terminated. I strongly encourage you to hire counsel immediately to advise you about potential lien filings or other soon to occur deadlines once counsel learn the deal is dead."

93. On February 13, 2015, Mr. Forney sent a letter to Mr. Lansink stating that he understood Mr. Lansink did not agree with the changes in the proposed settlement following the mediation settlement that he had discussed with Mr. Lansink on February 11 and that he had hoped to continue settlement negotiations with Millard. Mr. Forney

also stated that he contacted Mr. Waugh as "a pragmatic choice I made because, as I have told you, I am in the middle of a two-week trial involving birth injuries to a child. I simply do not have the time this week to devote to resolving the various differences by and among Millard, yourself, and Byrne."

94. At no time following the mediation did Mr. Forney obtain Lansink's authority to enter into any proposed settlement that was discussed after mediation.

95. As soon as Mr. Forney described to Mr. Lansink the changes to the settlement which had been discussed following the mediation, Mr. Lansink immediately told Mr. Forney that Lansink would not agree to the changes.

96. On February 13, 2015, Mr. Griffin sent an email to Mr. Westerhold requesting payment to Byrne in the amount of $75,000.00 in exchange for a release of Byrne's mechanic's lien, with the money to be paid directly from Henning.

97. On February 17, 2015, Mr. Lansink met with Mr. Bill DeBauche and provided him with documents regarding the Project and the Dispute and retained him as Lansink's attorney.

98. On February 18, 2015, Mr. Westerhold sent an email with an attached letter directly to Mr. Lansink, with a copy to Mr. Forney, stating that Millard intended to go through with the settlement with Byrne, and to deduct amounts from Lansink for payments to Byrne, attorney's fees and other expenses incurred by Millard.

99. On February 19, 2015, Mr. DeBauche and Mr. Westerhold discussed Mr. Westerhold's February 18 letter by telephone.

100. On February 19, 2015, Mr. DeBauche sent an email to Mr. Westerhold, Mr. Stone and Mr. Griffin stating that Mr. Lansink had told him that the current proposed

deal is not the settlement he agreed to, and that he was not willing to agree to the materially-changed deal. All offers made by Lansink were withdrawn because there was no binding settlement in place because of the material changes made by other parties after mediation.

101. On February 19, 2015, Mr. DeBauche followed up with an email to Mr. Westerhold stating that it was Lansink's position that no binding settlement existed, and that if Millard Lumber took any of the actions set forth in Mr. Westerhold's February 18 letter, it would be as a volunteer because Lansink disagreed with the positions in Mr. Westerhold's letter.

102. On February 19, 2015, Mr. Forney sent an email to Mr. Lansink, with a copy to Mr. DeBauche, in response to Mr. Lansink's email which had stated that Mr. DeBauche would be taking over as counsel for Lansink. Mr. Forney stated, "OK. Have bill call me."

103. Later in the day on February 19, 2015, Owen Griffin, attorney for Byrne, sent an email to Mr. DeBauche stating that there was a binding settlement, and attaching earlier documents. Mr. Griffin also stated: "Further, I have consulted both Mr. Westerhold and Mr. Forney in regard to the agreement to settle and both have confirmed that they believe a settlement agreement was officially reached in this matter. Mr. Griffin also announced his intention to file a lawsuit to enforce the settlement.

104. Later in the day on February 19, 2015, Mr. DeBauche replied to Mr. Griffin's email. Mr. DeBauche sent this email to Mr. Griffin, Mr. Westerhold, and Mr. Stone. Mr. DeBauche stated to Mr. Griffin that he had documents which showed that there was no binding settlement. Mr. DeBauche also stated that if Mr. Forney went

ahead without Lansink's authorization and entered into a settlement which is found binding, Lansink may have a claim against Mr. Forney. Mr. DeBauche asked Mr. Griffin for any documents by which Mr. Forney represented that Lansink was agreeing to any changes in the terms after the mediation. Mr. DeBauche stated: "I do not have any documents like that in my file, and if they exist, I need to notify Mr. Lansink about it." Finally, Mr. DeBauche asked Mr. Griffin if Byrne Construction would like to join Lansink in a pass through claim in which a lawsuit would be filed to collect both Lansink's claims and Byrne's claims.

105. Later in the day on February 19, 2015, Mr. Forney sent an email to Mr. DeBauche stating: "Just finished closing in a two week jury case. I'll be available Friday by cell. Pls call 816 805 8330. I've got a drs. appt. in the am but should be available by 11:00."

106. Later in the day on February 19, 2015, Mr. DeBauche sent an email to Mr. Forney stating: "OK. I am in a deposition first thing in the morning, but I may have an afternoon break." Mr. DeBauche asked Mr. Forney if there were any documents by which Mr. Forney "personally bound Lansink to the deal as it was revised after the mediation." Mr. DeBauche stated that he had seen no documents by which Mr. Forney might have done so, and that Mr. Lansink was surprised by Mr. Griffin's assertion that Mr. Forney did so. Mr. DeBauche concluded by stating: "I would be very interested in your thoughts on this, and in whether there are any documents which would shed light on these issues."

107. Later in the day on February 19, 2015, Mr. Griffin sent an email to Mr. DeBauche stating: "The February 3rd e-mails that I sent you were after all terms were

discussed and agreed upon. Most certainly, there were no further terms that needed to be worked out concerning Byrne Construction. The formal settlement agreement was drafted and circulated the same day."

108. Later in the day on February 19, 2015, Mr. DeBauche replied to Mr. Griffin's email and stated that all of the documents in his file indicated that Mr. Lansink never agreed to the changes in the deal after the mediation, and that "all of the documents in my file indicate that Greg Forney never told anyone that Lansink was agreeing to the changes in the deal after the mediation." Mr. DeBauche described other communications and documents which indicated that no agreement was reached after the mediation. Mr. DeBauche stated: "Mr. Lansink said no, told Greg Forney to say no, and as far as I can tell, Greg Forney told everyone no." Mr. DeBauche concluded with: "That is why I am interested in any documents in which Greg Forney agreed to the changed deal. If they exist, and Greg Forney did not give copies to Mr. Lansink or tell Mr. Lansink about them, I would like to read them."

109. Later in the day on February 19, 2015, Mr. Griffin sent two emails to Mr. DeBauche. The first said "Bill: Call me." The second email attached emails from January 29 from Mr. Waugh and other counsel.

110. Later in the day on February 19, 2015, Mr. DeBauche replied to Mr. Griffin's two emails and sent an email to Mr. Griffin stating that the January 29 emails do not show that there was a binding settlement. Mr. DeBauche concluded his email with: "Unless there is some clear documentation that Lansink, either through Mr. Lansink or Mr. Forney, unequivocally stated that the changes to the deal after the mediation were acceptable to Lansink, I am not understanding how there is a deal

which can be enforced in Court. But if there is a letter or email from Mr. Forney in which he stated without reservation something like ‘Lansink absolutely agrees to all of the changes in the agreement which took place after the mediation’, then I want to see that.”

111. Later in the day on February 19, 2015, Mr. Griffin replied to Mr. DeBauche’s email stating: “Forney sent the e-mail asking us to sit tight on January 29th. On February 3 he confirmed agreement.”

112. Later in the day on February 19, 2015, Mr. DeBauche replied to Mr. Griffin’s email stating: “How did he confirm agreement on February 3, specifically? That is very important. From what I am reading in the file between Forney and Mr. Lansink in the entire first week of February, which is obviously attorney-client privileged as to its specific content, Mr. Forney was clearly indicating that there was no settlement yet. If Forney was telling his client one thing and you another, we need to know that.”

113. Later in the day on February 19, 2015, Mr. Griffin replied to Mr. DeBauche’s email stating: “I consider the phrase ‘yes we have a deal’ to be confirmation.” Mr. Griffin forwarded Mr. Forney’s February 3, 2015, email, in which Mr. Forney stated “yes we have a deal.”

114. Later in the day on February 19, 2015, Mr. Griffin sent another email to Mr. DeBauche stating: “As you can see below, Greg Forney then drafted and circulated the proposed formal settlement agreement within two hours of confirming that ‘yes we have a deal’ to me.” Mr. Griffin forwarded Mr. Forney’s February 3 email by which he sent a draft release to Mr. Griffin and Mr. Westerhold.

115. Later in the day on February 19, 2015, Mr. DeBauche replied to the email from Mr. Griffin by which he forwarded Mr. Forney's February 3, 2015 email in which Mr. Forney stated "yes we have a deal." Mr. DeBauche stated to Mr. Griffin, "We did not have this email before. I will discuss it with Mr. Lansink."

116. Later in the day on February 19, 2015, Mr. Forney sent an email to Mr. DeBauche replying to Mr. DeBauche's email which stated: "OK. I am in a deposition first thing in the morning, but I may have an afternoon break."

117. Later in the day on February 19, 2015, Mr. DeBauche sent an email to Mr. Forney telling Mr. Forney about Owen Griffin's transmittal to Mr. DeBauche of Mr. Forney's February 3 emails and asking him if the February 3 emails were genuine, and if in fact Mr. Forney sent the email in which he said "yes we have a deal."

118. Later in the day on February 19, 2015, Mr. Forney replied to Mr. DeBauche's email stating: "I'll talk to you Friday. I'm going to fall down after a two week jury trial." Mr. Forney then sent another email to Mr. DeBauche stating: "Call tommorrow [sic] at 816 805 8330."

119. Later in the day on February 19, 2015, Mr. DeBauche replied to Mr. Forney's email stating: "I know how it is impossible to think after a jury trial, or to do anything other than drink. There is no rush or time deadline on what is going on with Lansink."

120. Later in the day on February 19, 2015, Mr. Forney sent an email to Mr. DeBauche, stating: "Thx for the understanding on my brain drain. If all else fails, call me Saturday. I have a collection of email."

121. Later in the day on February 19, 2015, Mr. DeBauche sent an email to Mr. Forney stating: “Good. I am trying to collect all of the facts at this point, that is all I am doing.”

122. Later in the day on February 19, 2015, Mr. Forney replied to Mr. DeBauche’s email stating: “I know. My job is to help.”

123. Later in the day on February 19, 2015, Mr. DeBauche sent an email to Mr. Griffin stating: “Owen, I am going to dig into this much deeper with my client and Mr. Forney. If you can give me a few working days to get my arms around all of the facts, I would appreciate it.”

124. On February 20, 2015, Mr. Griffin sent an email to Mr. Westerhold stating that he had exchanged emails with Mr. DeBauche and “I believe he finally started to see the light.” Mr. Griffin then asked if “we will be able to work out payment to Byrne’s in exchange for a release of the mechanic’s lien today.”

125. On February 20, 2015, at 12:42 p.m., Mr. Griffin sent an email to Mr. Forney forwarding Mr. DeBauche’s email of February 19, 2015 to all counsel.

126. Later in the day on February 20, 2015, Mr. Westerhold sent an email to Mr. DeBauche asking him to call to see if the Dispute could be narrowed. Mr. DeBauche replied to Mr. Westerhold’s email stating: “I am in the middle of detailed discussions with Lansink’s prior attorney, Greg Forney. Owen Griffin provided me with some additional facts and documents late yesterday afternoon. I am discussing them with Mr. Forney. When I am done, Lansink may or may not change its position. I think that it would be helpful if you could wait until I am done with those communications with Mr. Forney before we talk.”

127. On February 23, 2015, from 12:16 p.m. to 2:00 p.m., Mr. DeBauche and Mr. Forney exchanged emails about the best procedure for discussing the Lansink matter. They decided that Mr. Forney would scan and send his documents to Mr. DeBauche before any discussion.

128. On February 23, 2015, at 1:20 p.m., Mr. Forney sent an email to Mr. Griffin stating that Mr. DeBauche had just called for Mr. Forney, and that Mr. Forney would talk to Mr. DeBauche "late today or tomorrow." This was four days after Mr. Forney's February 19 email to Mr. DeBauche in which Mr. Forney stated: "My job is to help."

129. On February 23, 2015, Rita Eldridge, Mr. Forney's assistant, sent an email to Mr. DeBauche attaching 115 pages of emails from Mr. Forney's files.

130. Later on the same day, February 23, 2015, Mr. DeBauche sent an email to Mr. Forney stating: "Greg, I have reviewed these emails. Here is the piece of the puzzle that I am not sure I have. When and how did Correy Lansink tell you that he would take the settlement deal, after it was changed from what everyone thought you had at the mediation?" Mr. DeBauche then described Owen Griffin's reliance on Mr. Forney's February 3 emails, in which Mr. Forney said "yes we have a deal" and in which Mr. Forney sent a draft release. Mr. DeBauche then stated that Mr. Griffin was about to file suit to enforce the settlement based on those February 3 emails from Mr. Forney. Mr. DeBauche concluded with: "I may not have all of the information, or know what I am looking at in context. Can you tell me how Correy Lansink communicated to you prior to your February 3 email that he would take the changed deal? I don't think that we will need to meet if you can provide that information."

131. Later in the day on February 23, 2015, after 5 p.m., Mr. DeBauche and Mr. Forney spoke by telephone. Mr. DeBauche asked Mr. Forney point blank if he had authority from Mr. Lansink to state “yes we have a deal” on February 3, 2015. There was a long silence. Then Mr. Forney let out a long sigh and said: “Bill, you have to look at this case from 30,000 feet up.” Mr. DeBauche asked Mr. Forney: “What does that mean?” Mr. Forney then talked about how the deal which he agreed to on February 3 was a really good deal and Mr. Lansink should have agreed to it because it would be a smart thing to do. Mr. Forney admitted that he had no authority from Mr. Lansink to enter into that deal on February 3 but said he thought he could talk Mr. Lansink into it after the fact. He said that he was beginning a long jury trial in a “bad baby case” and he just needed to clear this case off of his desk and get rid of it. In response, Mr. DeBauche stated: “Well Greg, it sounds like you are saying that a medical malpractice defense case is more important than a construction case.” Mr. Forney shouted into the phone “IT IS!” Mr. Forney told Mr. DeBauche that he thought from “the general feeling” that he was getting from conversations with Mr. Lansink before February 3 was that Mr. Lansink would be all right with the deal that he agreed to on February 3, despite the fact that he had no authority from Mr. Lansink to enter into that deal. Mr. Forney also said that no matter what happened on February 3, that Mr. Westerhold changed the deal again on February 4, and that Mr. Forney told him on February 5 that it was not the deal.

132. On February 24, 2015, Mr. Griffin left a voice mail message for Mr. DeBauche stating that he was about to sue Lansink to enforce the settlement. Mr.

DeBauche sent an email to Mr. Griffin asking for a little more time to complete his investigation.

133. Later in the day on February 25, 2015, at 1:44 p.m., Mr. DeBauche sent an email to Mr. Griffin stating that Mr. Lansink had told Mr. Forney after the mediation that Lansink would not agree to any changes from what was agreed to at the mediation. Mr. DeBauche stressed the February 4 and 5 emails between Mr. Forney and Mr. Westerhold changed the deal from what it was on February 3. Mr. DeBauche stated: "To me, there was never a final deal," and that "I do not think that there was ever a meeting of the minds on any settlement terms by all of the parties." Mr. DeBauche stated that if a Court would find that the deal on February 3 is enforceable, to which Mr. Forney said "yes we have a deal," then Lansink had a legal malpractice claim against Mr. Forney. Mr. DeBauche further said that "Lansink's position is that there is no binding settlement and all of Lansink's prior settlement offers are withdrawn." Mr. DeBauche concluded with: "If you are going to sue to enforce a settlement, I suggest that you give us a little time before the hearing is set, for Lansink to make a claim on the policies of Mr. Forney and his firm. Their insurer may want to contribute to a resolution of the dispute."

134. On February 25, 2015, at 3:04 p.m., Mr. Griffin sent an email to Mr. Forney forwarding the email sent by Mr. DeBauche to Mr. Griffin on February 25, 2015, at 1:44 p.m. Mr. Forney replied to Mr. Griffin by email stating: "Im speechless. What a complete bunch of crap." This was six days after Mr. Forney's February 19 email to Mr. DeBauche in which Mr. Forney said: "My job is to help."

135. On February 26, 2015, Mr. Westerhold sent an email to Mr. DeBauche asking for a telephone call to try to negotiate and narrow the Dispute. Later in the day on February 26, 2015, Mr. DeBauche replied to Mr. Westerhold and forwarded his February 25 email to Owen Griffin. Mr. DeBauche stated that his instructions from Mr. Lansink were "not to hold any settlement discussions, and to get a mechanic's lien and lawsuit on file as soon as possible." Mr. DeBauche also described how Mr. Forney had disregarded Mr. Lansink's instructions, "for reasons which I [Mr. DeBauche] cannot understand, after reading everything and talking to Mr. Forney at length."

136. Later in the day on February 26, 2015, Mr. DeBauche and Mr. Westerhold exchanged four emails in which Mr. Westerhold tried to get settlement negotiations started and Mr. DeBauche told him that his instructions from Mr. Lansink are not to negotiate any further.

137. Mr. Forney's failure to follow Mr. Lansink's instruction to file a mechanic's lien against the Stoney Creek Inn, his unauthorized acceptance of a proposed settlement with Byrne after mediation, and his complete disregard of Mr. Lansink's specific directive that Lansink would not agree to the proposed settlement agreement directly caused Byrne to sue Lansink on February 27, 2015 seeking to enforce the alleged settlement with Byrne that Lansink never agreed to and that Mr. Forney had no authority to enter into. The suit was styled: David Byrne D/B/A Byrne's Construction v. Lansink Construction et al., Case No. 1516-CV04533 (hereinafter the "Lawsuit").

138. On March 3, 2015, Mr. DeBauche sent an email to Mr. Forney stating that Owen Griffin intended to file the Lawsuit to enforce the settlement based on Mr. Forney's email of February 3 in which Mr. Forney stated "Yes we have a deal." Mr.

DeBauche suggested to Mr. Forney that he discuss this matter with his partners because he believed that Mr. Lansink would be sending a claim letter to Mr. Forney.

139. Later in the day on March 3, 2015, Mr. Forney replied to Mr. DeBauche, stating only: "Thank you for your email. I will respond appropriately as needed. I am saddened that Correy has an inaccurate memory of the subject."

140. On March 4, 2015, Mr. DeBauche sent an email to Mr. Forney stating: "I did not suggest to Owen that he sue you, or that he sue to enforce the settlement. Owen initiated the idea that he would sue to enforce the settlement in the first phone call with me." Mr. DeBauche described his efforts to talk Mr. Griffin out of filing suit. Mr. DeBauche described Mr. Griffin's refusal to discuss presenting Byrne's claims as a pass-through claim with Lansink. Mr. DeBauche also stated that he had asked Mr. Griffin to hold off on holding any Court hearing until Lansink and Mr. Forney's firm could "sort out how the defense would be handled."

141. Later in the day, on March 4, 2015, Mr. Forney replied to Mr. DeBauche's email stating only: "Thanks for the update."

142. On March 10, 2015, Mr. DeBauche sent an email to Mr. Forney, forwarding Mr. Westerhold's letter of March 3, 2015, and stating that he had responded to Mr. Westerhold disputing his client's claims. Mr. DeBauche also informed Mr. Forney of the Lawsuit filed by Mr. Griffin to enforce the settlement.

143. Later in the day on March 10, 2015, Mr. Forney replied to Mr. DeBauche's email stating only: "Very good. Thank you."

144. On March 30, 2015, Mr. Lansink sent Mr. Forney a certified letter enclosing a copy of the Lawsuit. Mr. Lansink's letter stated that Mr. Forney was not authorized to send his February 3, 2015 email stating in which he said: "Yes we have a deal." Mr. Lansink reminded Mr. Forney that prior to his February 3 email, Mr. Lansink told him to stop all settlement negotiations and to file a mechanic's lien on the Stoney Creek Inn. Mr. Lansink's letter went on to state that Mr. Forney's unauthorized conduct and his failure to follow Mr. Lansink's instructions fell below the standard of care and had forced Lansink to defend the Lawsuit. Mr. Lansink further advised Mr. Forney that Lansink would incur significant attorney's fees and costs defending the Lawsuit. Mr. Lansink enclosed with his letter Mr. Westerhold's letter of March 3, 2015 on behalf of Millard which made demand on Lansink for actual damages, costs and fees, which Lansink would incur because of Mr. Forney's unauthorized conduct. Mr. Lansink concluded his letter by asking Mr. Forney to put Shaffer's insurance carrier on notice of Lansink's claim.

145. On May 1, 2015, Mr. DeBauche sent an email to Mr. Forney notifying him of Mr. Griffin's intent to seek a quick hearing to enforce the settlement, and enclosing Lansink's written discovery pleadings served on the other parties to the Lawsuit.

146. On May 4, 2015, Mr. DeBauche sent an email to Mr. Forney notifying him that Mr. Griffin's suit to enforce the settlement has been assigned to Judge Harrell, and asking him if he knew anything about Judge Harrell. Mr. DeBauche also stated that there is a Case Management Conference scheduled for July 13, 2015. Mr. Forney never responded to this email.

147. On August 17, 2015, Mr. DeBauche sent an email to Mr. Forney informing him of the Case Management Conference which had been held that day, and at which an evidentiary hearing had been scheduled for November 20, 2015. Mr. DeBauche stated that he would need to present Mr. Forney's testimony and asked if Mr. Forney would need to be subpoenaed.

148. On August 17, 2015, attorney Jim Morrow called Mr. DeBauche and stated that he had been asked to represent Mr. Forney. Mr. Morrow stated that he had not been retained by an insurance carrier. Mr. Morrow said that all communications should be sent to him and not to Mr. Forney directly.

149. At no time during or after mediation did the parties ever agree on a single, final draft of a release and both Lansink and Henning never agreed to any form of the release.

150. At no time after the mediation did Mr. Forney obtain Lansink's authority to enter into any settlement that was discussed following the mediation.

151. As soon as Mr. Forney described to Mr. Lansink the changes to the settlement which had been discussed following the mediation, Mr. Lansink immediately told Mr. Forney that Lansink would not agree to the changes in the settlement.

152. On November 20, 2015, Mr. Forney testified under oath on behalf of Byrne in the Lawsuit and falsely stated that Mr. Lansink had authorized him to accept the alleged settlement with Byrne and Millard despite telling Mr. DeBauche he never had any such authority, and despite the fact that no authority appears in any document.

153. Mr. Forney committed perjury and breached the fiduciary duties he owed to Lansink by falsely testifying that Mr. Lansink had authorized the alleged settlement with Byrne.

COUNT I – LEGAL MALPRACTICE

Lansink, for Count I of its causes of action against Defendants, states and alleges as follows:

154. Lansink incorporates by reference the allegations set forth in paragraphs 1 through 153 of this Complaint as though fully set forth herein.

155. Mr. Forney, in performing legal services for Lansink, had a duty to use that degree of care, skill and learning that is ordinarily exercised by other attorneys under the same or similar circumstances.

156. Mr. Forney breached his legal duties to Lansink and was careless, negligent and grossly negligent in several material respects including but not limited to:

A. Failing to file a mechanic's lien against the Stoney Creek Inn;

B. Representing to counsel for other parties in the Project and the Dispute that Lansink had agreed to settle the Dispute when Mr. Lansink had no knowledge of the agreement and Mr. Forney had no authority to enter into the agreement;

C. Failing to disclose to Lansink he had no experience in construction law;

D. Failing to disclose to Lansink he did not know how to file a mechanic's lien;

E. Failing to associate with an attorney who was experienced in construction law matters and who knew how to file a mechanic's lien; and

F. Failing to disclose to Lansink that all of his time and attention was being devoted to defending a "bad baby" medical malpractice case that he and Shaffer deemed more important than representing and protecting Lansink's interests.

157. Mr. Forney's negligence, gross negligence and legal malpractice was wanton, intentional, willful, purposeful, malicious and/or undertaken in conscious disregard for the truth.

158. As a direct and proximate result of Mr. Forney's negligence, gross negligence and legal malpractice, Lansink has sustained damages in excess of $400,000.00 and continues to sustain damages defending the Lawsuit which was caused to be filed because of Mr. Forney's wrongful conduct.

WHEREFORE, Lansink prays for judgment on Count I of its claim against Defendants for a sum in excess of Seventy-Five Thousand Dollars ($75,000.00); for special, punitive and exemplary damages that are fair and reasonable and warranted by the evidence; for disgorgement of all fees paid to Defendants by Lansink; for its costs and expenses in bringing this action; and for such other relief as it may be entitled to by law or as the Court deems just and proper.

COUNT II – BREACH OF CONTRACT

Lansink, for Count II of its causes of action against Defendants, states and alleges as follows:

159. Lansink incorporates by reference the allegations set forth in paragraphs 1 through 158 of this Complaint as though fully set forth herein.

160. Defendants entered into a contract with Lansink whereby Defendants agreed to file a mechanic's lien against the Stoney Creek Inn and to protect Lansink's interests in the Dispute and the Project and in exchange, Lansink agreed to pay Defendants their hourly rates.

161. The contract between Lansink and Defendants imposed upon Defendants a duty and obligation to know and understand the facts, circumstances and law relating to the Project and the Dispute, how to file a mechanic's lien and otherwise protect Lansink's interests in the Project and the Dispute.

162. Defendants materially breached their contract with Lansink by failing to file a mechanic's lien against the Stoney Creek Hotel, by failing to protect Lansink's interests in the Project and in the Dispute and by agreeing to a proposed settlement without Lansink's knowledge or consent in direct contravention of Lansink's instructions.

163. As a direct and proximate result of Defendants' breach of contract, Lansink has sustained damages in excess of $400,000.00 and continues to sustain damages defending the Lawsuit which was caused to be filed against Lansink because of Defendants' failure to fulfill their contractual obligations.

WHEREFORE, Lansink prays for judgment on Count II of its claim against Defendants for a sum in excess of Seventy-Five Thousand Dollars ($75,000.00); for its costs and expenses in bringing this action; and for such other relief as it may be entitled to by law or as the Court deems just and proper.

COUNT III – BREACH OF FIDUCIARY DUTY

Lansink, for Count III of its causes of action against Defendants, states and alleges as follows:

164. Lansink incorporates by reference the allegations set forth in paragraphs 1 through 163 of this Complaint as though fully set forth herein.

165. In representing and providing legal services and legal advice to Lansink, Mr. Forney had a fiduciary duty to act in good faith and with due regard to Lansink's interests and was prohibited from placing his or Shaffer's interests ahead of Lansink's interests.

166. Mr. Forney and Shaffer breached their fiduciary duties to Lansink in several material respects including but not limited to:

A. Placing their financial interests ahead of Lansink's and acting in their own self-interests.

B. Mr. Forney testifying falsely under oath that he had discussed the alleged Byrne settlement with Lansink and that Lansink had agreed to the alleged settlement.

C. Failing to disclose to Lansink that all of Mr. Forney's time and attention was being devoted to defending a "bad baby" medical malpractice case that Mr. Forney and Shaffer deemed more important than representing and protecting Lansink's interests.

167. Defendants' breach of their fiduciary duties to Lansink was wanton, intentional, willful, purposeful, malicious and/or undertaken in conscious disregard for the truth.

168. As a direct and proximate result of Defendants breaching their fiduciary duties to Lansink, Lansink has sustained damages in excess of $400,000.00 and continues to sustain damages defending the Lawsuit which was caused to be filed against Lansink because of Defendants' wrongful conduct.

WHEREFORE, Lansink prays for judgment on Count III of its claim against Defendants for a sum in excess of Seventy-Five Thousand Dollars ($75,000.00); for special, punitive and exemplary damages that are fair and reasonable and warranted by the evidence; for disgorgement of all fees paid to Defendants; for its costs and expenses in bringing this action; and for such other relief as it may be entitled to by law or as the Court deems just and proper.

COUNT IV – NEGLIGENT MISREPRESENTATION

Lansink, for Count IV of its causes of action against Defendants, states and alleges as follows:

169. Lansink incorporates by reference the allegations set forth in paragraphs 1 through 168 of this Complaint as though fully set forth herein.

170. Defendants, in the course of their businesses, professions and employment, negligently supplied false and/or incorrect information and/or negligently failed to supply material information to Lansink about the Project, the Dispute and their competency and ability to represent Lansink.

171. Lansink justifiably relied on the Defendants' negligent misrepresentations and/or omissions of material facts.

172. Lansink was within the group of persons for whose benefit and guidance Defendants supplied information and Defendants intended the information that they

supplied to Lansink to influence Lansink's decisions about whether to retain Defendants, whether to file a mechanic's lien, when to file a mechanic's lien, whether to participate in mediation and whether to resolve its claims against Byrne and others relating to the Project and the Dispute.

173. Defendants owed a duty to Lansink to use reasonable care in obtaining, evaluating and disclosing all material information about the Project, the Dispute and their competence and ability to represent Lansink and Defendants breached this duty by negligently supplying false and/or incorrect information and/or negligently failing to disclose material information to Lansink in several material respects including but not limited to the following:

A. Negligently advising Lansink not to file a mechanic's lien;

B. Negligently failing to conduct adequate factual and legal research to know and understand Lansink's interests in the Project and the Dispute and then advising Lansink about the Project and the Dispute without having all necessary and relevant information to do so;

C. Negligently failing to disclose Mr. Forney's lack of experience in handling construction law disputes; and

D. Negligently failing to disclose to Lansink that Mr. Forney was preoccupied with handling a "bad baby" medical malpractice case that Defendants deemed more important and pressing than protecting Lansink's interests in the Project and the Dispute.

174. If Lansink had been apprised of all material information about Defendants' negligent misrepresentations, Lansink would not have agreed to allow Defendants to represent it and instead would have retained competent counsel to do so.

175. Defendants' negligent non-disclosure of material facts and/or their negligent misrepresentations of material facts to Lansink about their competence, the Project and the Dispute were wanton, intentional, willful, purposeful, malicious and/or undertaken in conscious disregard for the truth.

176. As a direct and proximate result of Defendants' negligent misrepresentations, Lansink has sustained damages in excess of $400,000.00 and continues to sustain damages defending the Lawsuit which was caused to be filed against Lansink because of Defendants' negligent misrepresentations.

WHEREFORE, Lansink prays for judgment on Count IV of its claim against Defendants for a sum in excess of Seventy-Five Thousand Dollars ($75,000.00); for special, punitive and exemplary damages that are fair and reasonable and warranted by the evidence; for disgorgement of all fees paid to Defendants; for its costs and expenses in bringing this action; and for such other relief as it may be entitled to by law or as the Court deems just and proper.

COUNT V – FRAUD

Lansink, for Count V of its causes of action against the Defendants, states and alleges as follows:

177. Lansink incorporates by reference the allegations set forth in paragraphs 1 through 176 of this Complaint as though fully set forth herein.

178. Defendants intentionally misrepresented and/or intentionally failed to disclose to Lansink several material facts including but not limited to:

A. Intentionally failing to disclose to Lansink Mr. Forney's lack of experience in handling construction law disputes;

B. Intentionally failing to disclose to Lansink that Mr. Forney was preoccupied with handling a "bad baby" medical malpractice case that Defendants deemed more important and pressing than protecting Lansink's interests in the Project and the Dispute;

C. Intentionally placing their financial interests ahead of Lansink's and acting in their own self-interests.

D. Mr. Forney intentionally lying under oath by testifying that he had discussed the alleged settlement with Byrne with Lansink and that Lansink had agreed to the alleged settlement.

179. Defendants had a duty to disclose to Lansink all material facts about their ability to represent and protect Lansink's interests in the Dispute and the Project and these material facts were within the exclusive knowledge of the Defendants and not available to Lansink.

180. Defendants knew that Lansink was not aware of all material facts affecting their ability to represent and protect Lansink's interests in the Dispute and the Project and these material facts were vital to Lansink's decision to retain Defendants.

181. Lansink lacked knowledge and training in Missouri law and justifiably relied upon of Defendants' representations about their ability to represent and protect

Lansink's interests in the Dispute and the Project and to fully disclose all such material facts.

182. Defendants' intentional non-disclosure of material facts and/or their intentional misrepresentations of material facts to Lansink about their ability to represent and protect Lansink's interests in the Dispute and the Project were wanton, intentional, willful, purposeful, malicious and/or undertaken in conscious disregard for the truth.

183. If Lansink had been apprised of the Defendants' inability and/or refusal to represent and protect Lansink's interests in the Dispute and the Project Lansink would not have retained Defendants.

184. As a direct and proximate result of Defendants' fraudulent conduct, misrepresentations and omissions, Lansink has sustained damages in excess of $400,000.00 and continues to sustain damages defending the Lawsuit which was caused to be filed against Lansink because of Defendants' fraud.

WHEREFORE, Lansink prays for judgment on Count V of its claim against Defendants for a sum in excess of Seventy-Five Thousand Dollars ($75,000.00); for special, punitive and exemplary damages that are fair and reasonable and warranted by the evidence; for disgorgement of all fees paid to Defendants; for its costs and expenses in bringing this action; and for such other relief as it may be entitled to by law or as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Lansink hereby requests a trial by jury in the above-captioned case.

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